NEW PCB REGULATIONS TIGHTEN CONTROL OVER STORAGE AND SHIPMENT

Major flaws have been identified in the way PCB wastes are handled from the time they leave the generator until they are received by a disposal facility. Since these wastes are regulated under the Toxic Substances Control Act (TSCA), not RCRA, many of the "cradle-to-grave" protections of RCRA are not available. This has resulted in several instances of improper storage and disposal because no controls have existed on wastes that are in transit from the generator to the disposal facility. On December 21, 1989 (*54 FR* 52716-52756), EPA finalized amendments to the TSCA regulatory program that are designed to remedy this problem. Specifically, the following major changes were made:

1. Entities who generate, transport, store, or dispose of PCB wastes must notify EPA of their activities and obtain an EPA identification number.

2. The RCRA Uniform Hazardous Waste Manifest will be used to track all shipments of PCBs from the generator to the ultimate disposal facility.

3. Numerous recordkeeping and reporting requirements are imposed that are designed to assure that PCBs receive proper and timely disposal.

4. Commercial PCB storage facilities must receive specific approval to conduct their activities, they must prepare closure plans and closure cost estimates, and they must provide financial assurance that they can properly close.

BACKGROUND

Approximately 1.25 billion pounds of PCBs were used in the United States from 1929 to the early 1970s. These chemicals were inflammable, possessed excellent electrical properties, and exhibited extreme chemical and thermal stability (properties that are related to their persistence in the environment).

An estimated 965 million pounds of PCBs were used as dielectric fluids in electrical transformers and capacitors. This type of electrical equipment can have a useful life ranging from 15 to 40 years; hence, 310 million pounds of PCBs are still believed to be in use in this type of service. Approximately 100 million pounds of PCBs were used as hydraulic and heat transfer fluids, 45 million pounds were used in carbonless copy papers, and 115 million pounds were used in a variety of diverse applications ranging from plasticizers to printing inks.

In May 1979, EPA first issued regulations at 40 *CFR* Part 761 controlling the manufacture, processing, "distribution in commerce," and disposal of PCBs. These regulations were designed to sharply limit the continued use and disposal of PCBs. Although extensive and complex, the regulations had several major loopholes. First, EPA did not oversee the "intermediate handlers," such as transporters and commercial storers, who handle PCB wastes from the time they leave the generator's facility until they arrive at the disposal facility. In fact, the agency lacked a means to identify who these intermediate handlers were.

Second, commercial storage facilities were outside of the TSCA permitting process. As a result, no evaluation was made of an owner's or operator's qualifications to operate such a facility. Equally as important, no method was provided to assure that funds are available to clean up and close a storage facility in the event the operator goes out of business.

Finally, no mechanism existed for tracking shipments of PCB wastes from the generator to the disposal facility. Unscrupulous transporters could, for example, divert waste shipments to illegal disposal, and the diversion would be very difficult to detect.

When several improper PCB management cases received widespread publicity, Congress held oversight hearings and support grew for transferring the PCB regulatory program from TSCA to RCRA. Because various phase-out regulations for PCB electrical equipment are expected to produce a surge in PCB disposal during the next three years, EPA opposed transfer of the PCB regulations to RCRA:

> "The Agency found that after 10 years of experience with and adaptation to the TSCA disposal requirements, a wholesale transfer of the program to RCRA would be far more complex and potentially disruptive than originally anticipated. EPA concluded that the administrative process alone (*i.e.*, the listing rulemaking and the necessity of numerous amendments to the RCRA system to accommodate PCBs) would be extremely resource intensive and time consuming with little, if any, additional benefit to health or the environment." [53 *FR* 37439]

As a result, on September 26, 1988 (53 *FR* 37436-37471), the agency proposed amendments to the existing TSCA regulations to close the loopholes that have been identified thus far. The proposed amendments, along with a few significant changes, were finalized on December 21, 1989.

IMPORTANT DEFINITIONS

The new PCB tracking and permitting regulations are closely modeled after the RCRA regulatory program; however, the existing TSCA regulations did not include the concept of "generator of PCB waste." Hence, this term is defined in the final rule as follows:

> "[A]ny person whose act or process produces PCBs that are regulated for disposal under Subpart D of this part [Part 761], or whose act first causes PCBs or PCB Items to become subject to the disposal requirements of subpart D of this part, or who has physical control over the PCBs when a decision is made that the use of the PCBs has been terminated and therefore is subject to the disposal requirements of subpart D of this part. Unless another provision of this part specifically requires a site-specific meaning, 'generator of PCB waste' includes all of the sites of PCB waste generation owned or operated by the person who generates PCB waste."

Several examples will help clarify who will typically be considered a generator under TSCA:

- Persons who own or use equipment containing ≥50 ppm PCBs, and who retire the equipment from service are considered generators. Utilities retiring PCB transformers and capacitors from service fall into this category.

- An owner or user of PCB-containing electrical equipment is not a generator of PCB waste when he ships the equipment offsite for servicing if a decision has not yet been made whether to repair the equipment or to dispose of it. If either the owner or the servicing facility subsequently decides that the equipment cannot be repaired, the equipment then becomes PCB waste, and the servicer or processor in physical control of the equipment at that time becomes the generator.

- A transporter who spills a PCB liquid and cleans up the spill is considered a generator.

- A disposal facility that separates a PCB-contaminated sludge from a dielectric fluid and then sends the sludge offsite for incineration is considered a generator.

- A person who removes PCB wastes from existing disposal sites is also considered a generator.

Although these examples closely parallel the concept of a generator under RCRA, the TSCA definition is tied to a "person" rather than a "facility." Since a "person" includes individuals, government entities, corporations, and other business entities, a TSCA generator can include a large number of sites or facilities that it uses, owns, or controls. For example, an electrical utility may be considered as a single generator, even though it owns hundreds of sites where PCBs are used. The utility could be covered by a single EPA identification number.

An important distinction is made, however, in the case of PCB storage facilities. If an organization owns or operates PCB storage facilities, each of these facilities is considered a unique generator and must have a unique identification number. This distinction is made because the new PCB tracking system ties every waste shipment to an originating location and a final disposal location. In most cases, storage facilities will be the point of origin of a PCB waste shipment. Storage facilities are also being targeted for increased attention from EPA inspectors.

"Commercial Storer" Defined

The final rule gives the following definition of a "commercial storer of PCB waste":

> "[T]he owner or operator of each facility which is subject to the PCB storage facility standards of § 761.65, and who engages in storage activities involving PCB waste generated by others, or PCB waste that was removed while servicing the equipment owned by others and brokered for disposal. The receipt of a fee or any other form of compensation for storage services is not necessary to qualify as a commercial storer of PCB waste. It is sufficient under this definition that the facility stores PCB waste generated by others or the facility removed the PCB waste while servicing equipment owned by others. A generator who stores only the generator's own waste is subject to the storage requirements of § 761.65, but is not required to seek approval as a commercial storer. If a facility's storage of PCB waste at no time exceeds 500 gallons of PCBs, the owner or operator is not required to seek approval as a commercial storer of PCB waste."

This class of facilities will be required to obtain EPA identification numbers, and, along with transporters and disposal facilities, will be the only entities to whom generators can release their wastes.

Other Helpful Definitions

Becoming familiar with a few of the other definitions contained in this rule will help the reader understand the requirements for the various categories of PCB handlers:

Annual document log—the detailed information maintained at the facility on the PCB waste handling at the facility.

Annual report—the written document submitted each year by each disposer and commercial storer of PCB waste to the appropriate EPA Regional Administrator. The annual report is a brief summary of the information included in the annual document log.

Transporter of PCB waste—any person engaged in the transportation of regulated PCB waste by air, rail, high-

way, or water *for purposes other than consolidation by a generator.* [emphasis added]

PCB GENERATOR REQUIREMENTS

Figure 1 (page 2-4) summarizes the requirements of the December 21st rule that apply to generators of PCB wastes. Each of the major requirements are discussed below.

Notification by Generators

Generators who store the PCB wastes that they generate at their own facilities are required to notify EPA of their storage activities. These generators are expected to consist primarily of utilities, heavy industrial users of PCB equipment, and transformer service and repair facilities.

The notification form to be used (EPA Form 7710-53) is similar to the notification form used under RCRA. It must be filed by April 4, 1990, and a separate form is required for each storage area. In order to facilitate an orderly notification process, the agency encouraged generators, transporters, commercial storage facilities, and disposal facilities to file the notification form as soon as possible after the proposed rule was published (i.e., within 90 days of September 26, 1988). EPA will give early notifiers the highest priority for receiving an EPA identification number – a necessity if PCB wastes are to be sent to a disposal facility after the final rule becomes effective. (Note that the regulations allow generators to use the generic identification number "40 CFR Part 761" or a RCRA identification number if they have submitted a timely notification but have not yet been issued an identification number by EPA.)

EPA will issue the same identification number to a notifier under the TSCA program as has already been issued under RCRA. Thus, a generator will not have two different numbers if they are already subject to RCRA. This does not mean, however, that facilities that have notified under RCRA are excused from notification under TSCA.

All notifications are to be sent to: Chief, Chemical Regulation Branch (TS-798), Office of Toxic Substances, Environmental Protection Agency, Rm. NE-117, 401 M Street, SW., Washington, DC 20460.

Use of the Uniform Hazardous Waste Manifest

The cornerstone of the new PCB waste-tracking system is the Uniform Hazardous Waste Manifest. This shipping document accompanies the waste shipment, and enables the generator to assure himself (and EPA) that his waste has actually arrived at the intended destination. Although the system carries a substantial paperwork burden, it has the advantage of assigning the generator, rather than EPA, the task of confirming that wastes are properly disposed.

Although patterned closely after the RCRA manifesting system, several important changes are required for PCB wastes. The system works as follows:

1. Any generator shipping wastes with a PCB content ≥50 ppm must prepare a manifest if the waste is leaving the generator's control. No exclusion for "small quantity generators" exists for the manifesting requirement. EPA considers a waste to be out of the generator's control under the following conditions:

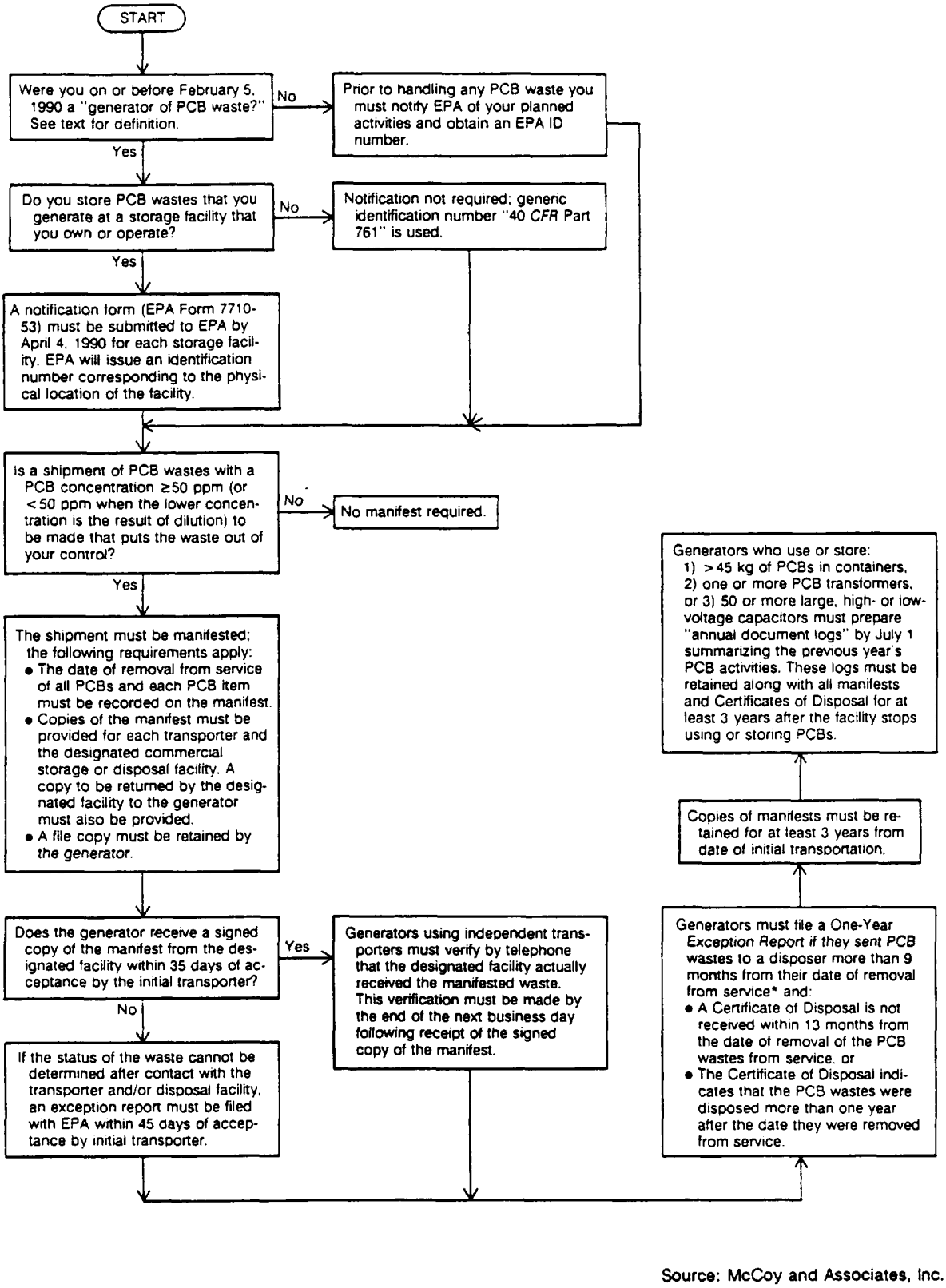
   > "This latter condition will generally be triggered when the generator turns its PCB waste over to a transporter for delivery to an off-site storage or disposal facility. The condition will also be satisfied when the PCB waste is placed on the generator's own transport vehicle for shipment to a commercial off-site storage or disposal facility, since the PCB waste is then being introduced into commerce in a manner that will cause the generator to lose control of the waste. A manifest need not accompany the shipment . . . to a storage or disposal facility owned or operated by the end user of PCBs and PCB Items, because these generators have not yet relinquished control over the PCB waste. This exception applies to both transport via the generator's vehicles and transport by an independent transporter. . . "

2. The date of removal from service for disposal for the PCBs and each PCB item contained in the shipment must be entered on the manifest. As discussed later, the purpose of this requirement is to track compliance with the regulatory limitation that PCB wastes cannot be stored for more than one year. The appropriate waste codes, (i.e., PCB1 for PCB articles, such as transformers and capacitors, and PCB2 for PCB containers) should also be entered in this section of the manifest.

3. The generator must sign the waste minimization certification on the manifest. According to EPA, the waste minimization requirement is satisfied as long as the generator has not increased the volume of waste via impermissible dilution.

4. Sufficient copies of the manifest must be printed to provide the generator, the initial transporter, each intermediate transporter, and the designated recipient commercial storage or disposal facility with copies. An additional copy must be provided for the final destination facility. This copy must be signed and returned to the generator to signify that the waste has been received at the proper destination.

5. In a departure from RCRA manifesting procedures, generators who use independent transporters are also required to verify receipt of the PCB waste by the designated facility with a telephone call, or other means of communication agreed upon by both parties. This verification must be made by the close of the



Source: McCoy and Associates, Inc.

FIGURE 1

REQUIREMENTS FOR GENERATORS OF PCB WASTES

next business day after the generator receives the signed return copy of the manifest indicating receipt of the waste by the designated facility. Generators must keep a record of these confirmation calls. This requirement is included in the final rule to discourage unscrupulous transporters or brokers from forging the signature of the responsible person at the destination facility on the manifest to be returned to the generator.

Exception Reporting

Although the exception reporting requirements of the new PCB rule closely parallel some of the RCRA exception reporting requirements, others are unique to the PCB program. First, as under RCRA, the generator must receive a signed return copy of his manifest from the designated facility within 35 days from the time the shipment was picked up by the initial transporter. If a copy isn't received within this time, the generator must contact the transporter and the commercial storage and/or disposal facility to determine the whereabouts of his waste. If the status of the waste cannot be determined within 45 days of initial shipment, an exception report must be sent to EPA. The report must include a copy of the manifest and a cover letter explaining the efforts taken to locate the waste and the results of those efforts.

Second, a One-Year Exception Report may be required for PCB wastes because, under TSCA, PCB wastes cannot be stored for more than a year prior to disposal. This storage period is allocated between the generator and disposal facility. If the generator sends the waste to a disposal facility within nine months of the date the PCBs were removed from service, the generator is assumed to be in compliance with the one-year limit. This essentially allows the disposal facility to store the waste for three months prior to disposal.

Once the disposal facility disposes of the PCB waste, the final rule requires the facility owner/operator to send the generator a Certificate of Disposal within 30 days. The Certificate of Disposal, therefore, is used as a tool for verifying compliance with the one-year storage limitation.

As written, the December 21st rule requires generators to file One-Year Exception Reports with EPA whenever the following two conditions occur:

> "(1) The generator or commercial storer transferred the PCBs or PCB Items to the disposer of PCB waste on a date *more than* 9 months from the date of removal from service for disposal of the affected PCBs or PCB Items, as indicated on the manifest or continuation sheet; and
>
> "(2) The generator or commercial storer either has not received within 13 months from the date of removal from service for disposal a Certificate of Disposal confirming the disposal of the affected PCBs or PCB Items, or the generator or commercial storer receives a Certificate of Disposal confirming disposal of the affected PCBs or PCB Items on a date more than one year after the date of removal from service." [54 *FR* 52756, emphasis added]

In essence, then, generators are required to file One-Year Exception Reports only when they have failed to send a PCB waste for disposal within the 9-month period allocated for them to do so. [Note that the final rule contains conflicting provisions regarding the conditions under which a One-Year Exception Report must be filed. The preamble requires the report to be submitted if the PCBs were sent to the disposal facility within the allowed nine-month period but the disposal facility failed to dispose of the waste by the end of the 12-month storage limitation. In essence, this approach requires the generator to report any disposal facility that does not provide for timely disposal of PCBs. The approach cited above (i.e., requiring the generator to report if he failed to send his waste to the disposal facility within the allowed nine-month period) has the effect of making the generator report on himself. Presumably the agency will clarify this discrepancy in a future rulemaking.]

Recordkeeping and Documentation

The generator keeps his original copy of each manifest, along with the copy returned by the designated facility, for at least three years from the date the PCB wastes were accepted by the initial transporter. In addition, an annual documentation requirement is imposed on certain users and storers of PCBs in §761.180(a), which is revised in the final rule to read as follows:

> "(a) *PCBs and PCB Items in service or projected for disposal.* Beginning February 5, 1990, each owner or operator of a facility, other than a commercial storer or a disposer of PCB waste, using or storing at any one time at least 45 kilograms (99.4 pounds) of PCBs contained in PCB Container(s), or one or more PCB Transformers, or 50 or more PCB Large High or Low Voltage Capacitors shall develop and maintain at the facility, or a central facility provided they are maintained at that facility, all annual records and the written annual document log of the disposition of PCBs and PCB Items. The written annual document log must be prepared for each facility by July 1 covering the previous calendar year (January through December). The annual document log shall be maintained for at least 3 years after the facility ceases using or storing PCBs and PCB Items in the quantities prescribed in this paragraph. Annual records (manifests and certificates of disposal) shall be maintained for the same period. . . ."

The content of the annual document log is specified in detail and includes:

- The name, address, and EPA ID number of the facil-

ity covered by the document, and the calendar year covered by the document;

- The unique manifest number of every manifest generated by the facility during the calendar year;
- The identity, description, and quantity of all PCB wastes generated at the facility;
- The date removed from service, date placed into storage for disposal, date placed into transport for offsite storage or disposal, and date of disposal of all PCB wastes generated at the facility;
- Categorized total quantities of PCBs or PCB items remaining in service at the end of the calendar year;
- Categorized total quantities of PCBs or PCB items removed from service, placed into storage for disposal, and placed into transport for offsite storage or disposal during the calendar year; and
- A record of each telephone call or other means of verification used to confirm receipt of each shipment of PCB waste by the designated facility, as discussed above.

The annual document log does not have to be submitted to EPA; however, it must be available for inspection, along with the annual records, by authorized representatives of the agency.

REQUIREMENTS APPLICABLE TO TRANSPORTERS

PCB transporter requirements under the final rule are summarized in Figure 2 (page 2-7).

Notification

All transporters of PCB wastes are required to notify EPA of their activities, using Form 7710-53, by April 4, 1990. After receiving the form, EPA will issue each transporter an identification number, which they must have before they can transport PCB wastes. (Note that the regulations do allow transporters to use the generic identification number "40 CFR Part 761" or a RCRA identification number if they have submitted a timely notification but have not yet been issued an ID number by EPA.)

Handling the Manifest

When a transporter picks up a PCB waste shipment from the generator, he signs and dates all copies of the manifest. Since this rule in no way affects the Department of Transportation's regulations regarding transport of hazardous material, the transporter must comply with all applicable DOT requirements.

When the transporter arrives at his destination, the receiving facility provides the transporter with a signed copy of the manifest for his records; the remaining copies accompany the waste. The preamble to the proposed rule noted that, "Until the signature of the designated facility or subsequent transporter is obtained, the waste would be considered to be in the custody of the transporter who last signed the manifest."

Recordkeeping

The transporter must retain all copies of manifests signed by the generator and the designated facility for a period of at least three years after the waste was accepted by the initial transporter.

If the transporter operates a transfer facility where PCB wastes are held during the normal course of transportation, they are subject to the existing storage facility standards of §761.65. However, unless the wastes are held for more than 10 days, the facility is not subject to the approval/closure/financial assurance requirements applicable to other storage facilities.

REQUIREMENTS APPLICABLE TO COMMERCIAL STORAGE FACILITIES

Figure 3 (page 2-8) summarizes the requirements for commercial storers of PCB wastes.

Notification

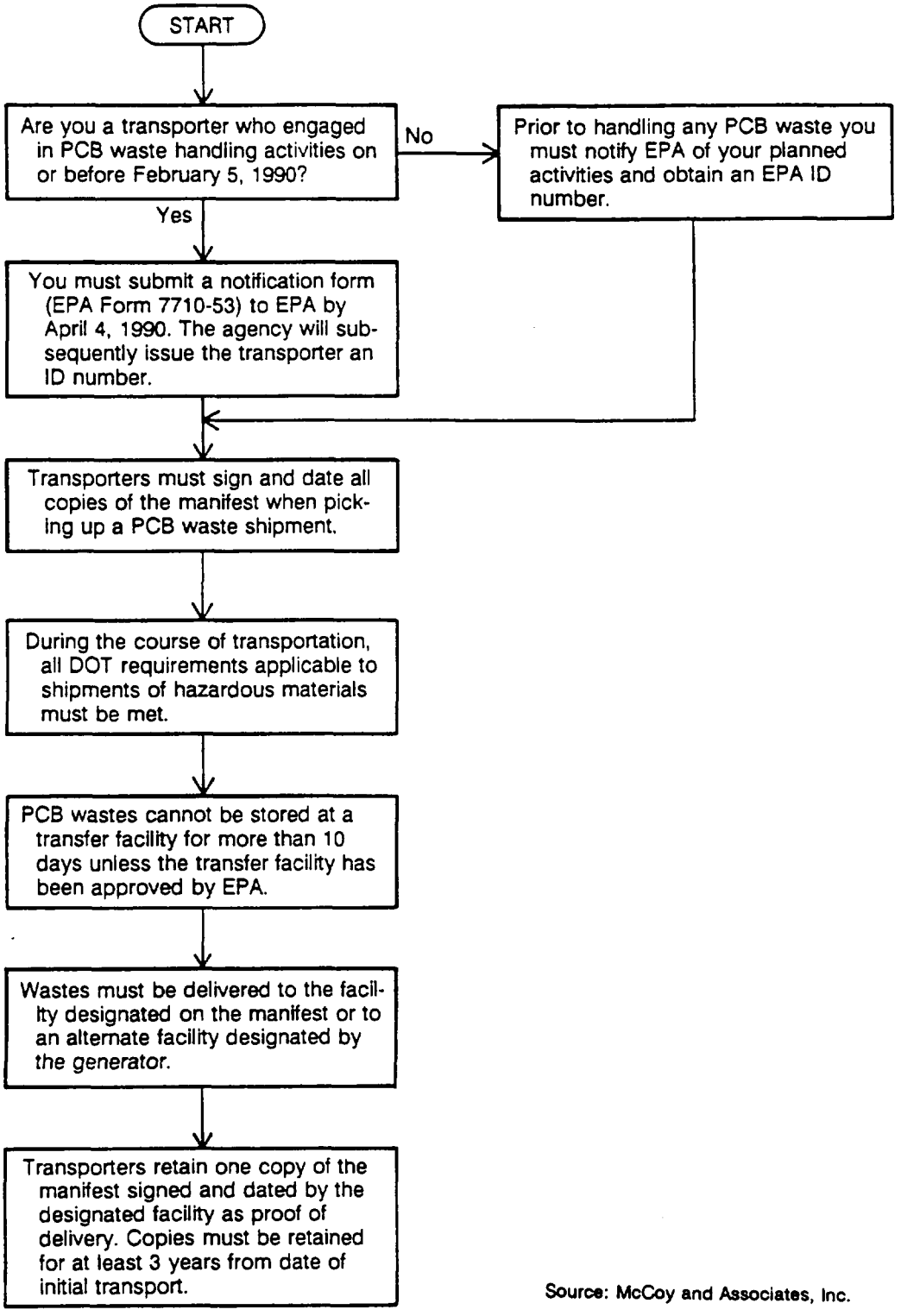
Commercial storage facilities are required to notify EPA of their PCB waste management activities via Form 7710-53 by April 4, 1990. The agency will then issue these facilities an EPA ID number. (Note that the regulations allow commercial storers to use the generic identification number "40 CFR Part 761" or a RCRA identification number if they have submitted a timely notification but have not yet been issued an ID number by EPA.) New facilities are required to submit this notification, obtain an EPA ID number, and have EPA approval prior to start up.

Approval to Operate

Before this final rule was promulgated, commercial storage facilities were not required to obtain a permit or other approval to conduct their operations. As a result, they may not have been qualified to manage PCB wastes, and equally as important, they were not required to plan and prepare for proper closure. These shortcomings have resulted in publicly funded cleanups of commercial storage facilities that have gone out of business.

The final rule changes this situation by subjecting all commercial PCB storage facilities to a formal approval process. On the effective date of the final rule, all existing commercial storage facilities are deemed to have interim status. These facilities then have until August 2, 1990 to apply for final approval of their operation. Interim status will remain in effect until EPA either grants or denies approval to operate.

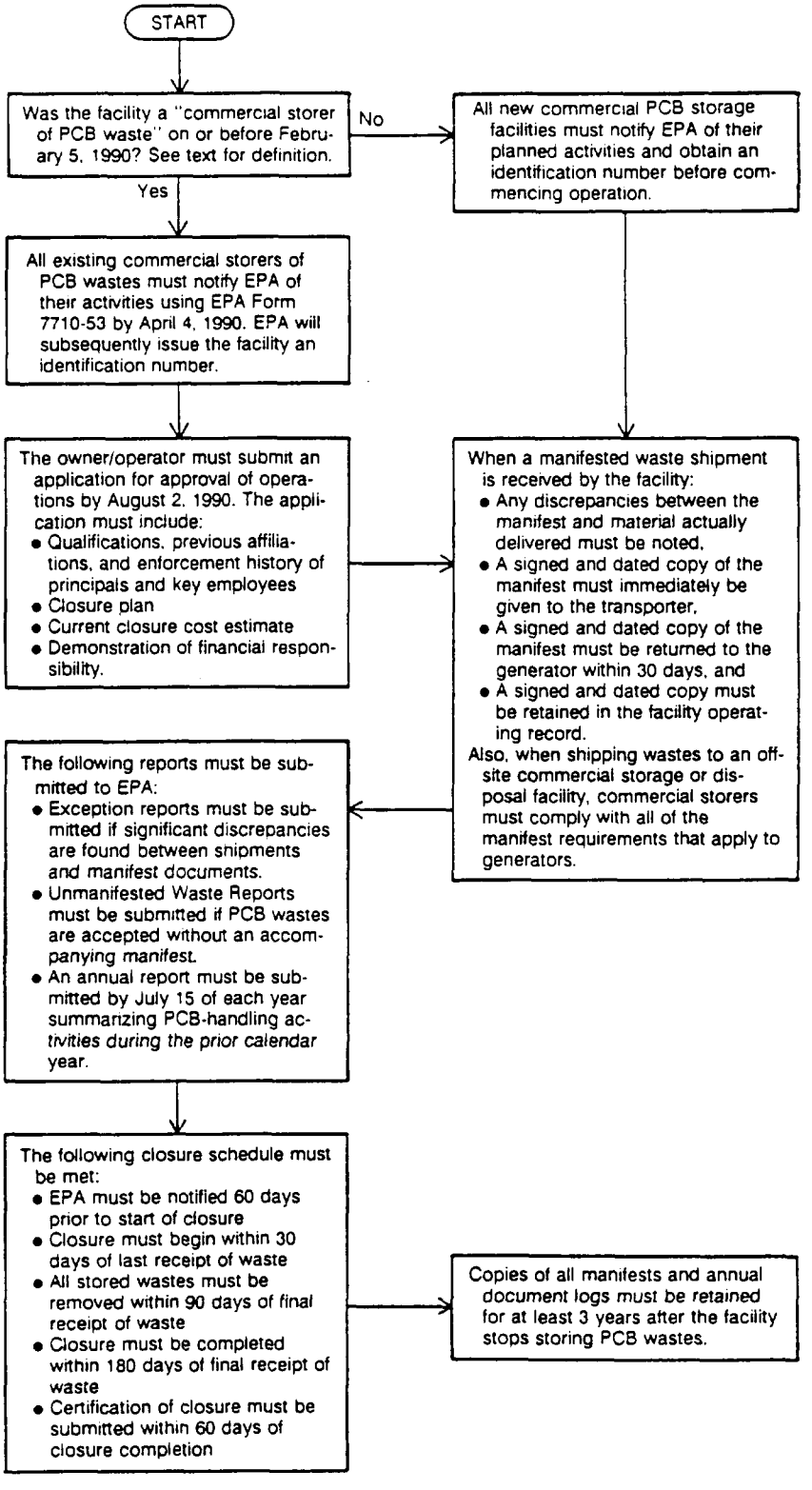
The application for approval has four main components. First, an applicant must demonstrate that its principals and key employees are technically qualified to



Source: McCoy and Associates, Inc.

FIGURE 2

REQUIREMENTS FOR TRANSPORTERS OF PCB WASTES



Source: McCoy and Associates, Inc.

FIGURE 3

REQUIREMENTS FOR COMMERCIAL STORAGE OF PCB WASTES

operate the facility. The previous experience of the principals and information on any environmental violations committed during the previous five years must be disclosed.

Second, the applicant must prepare a detailed closure plan establishing schedules and identifying all steps required to remove PCB wastes from the facility and decontaminate all equipment, structures, and property. Closure is assumed to take place at a time when maximum inventory exists at the facility.

Third, a cost estimate for closure must be prepared assuming that all closure activities will be conducted by an unrelated third party and using current market costs for disposal, storage, and decontamination. This cost estimate establishes the dollar amount of financial assurance that the owner/operator must provide for closing the facility.

Finally, the applicant must provide financial assurance for closure. Essentially the same financial assurance mechanisms are available under this new rule as are currently allowed under RCRA, namely:

- A financial test establishing that a parent corporation will have sufficient resources to provide for closure;
- A closure trust fund into which, over a maximum three-year period, the owner/operator deposits sufficient funds to pay for closure;
- A surety bond that guarantees the payment of closure costs to a closure trust fund;
- An irrevocable letter of credit assuring that a financial institution will make sufficient funds available to pay for closure; or
- Closure insurance, where the face value of the policy is at least equal to the current closure cost estimate.

The owner/operator may use any combination of these mechanisms to provide financial assurance.

Commercial storage facilities are also required to comply with the existing storage facility standards of §761.65, along with the new facility approval requirements.

PCB storage areas at RCRA-permitted facilities or ancillary to TSCA-approved PCB disposal facilities may be exempt from the new TSCA approval requirements for commercial storage facilities. In order to be exempt, these facilities have to demonstrate that they have already submitted adequate closure plans and made financial assurances substantially equivalent to those required by the new rule.

State and federal government storage facilities are exempt from the closure cost estimate and financial assurance requirements of this rule.

Manifest Handling

Commercial storage and disposal facilities must follow the same procedures when receiving shipments of manifested PCB wastes:

- Each copy of the manifest is signed and dated to certify that the waste covered by the manifest was received. One copy is immediately given to the transporter, one copy is retained in the operating record, and one copy is returned to the generator within 30 days of waste receipt.
- Any significant discrepancies between the quantity and type of waste identified on the manifest and the actual material received is noted on the manifest copies. "For bulk waste, significant discrepancies are variations greater than 10 percent in weight, and for batch waste, they are any variation in piece count, such as a discrepancy of one drum or other article in a truckload. Significant discrepancies in type are obvious differences which are discovered by inspection or analysis, such as when soil or other solids are substituted for liquids, or when PCB waste greater than 500 ppm is substituted for PCB waste below 500 ppm."

Recordkeeping

The new regulations require that PCB wastes be tracked to verify that the one-year storage limitation prior to disposal is complied with. Therefore, the commercial storer must note in his records the dates of removal from service of all PCBs or PCB items that he stores. When this material is sent to another storage or disposal facility, a manifest is prepared that includes the dates of removal from service of the material being shipped.

An annual document log similar to the one previously described under the section detailing generator requirements must also be prepared by commercial storers. The annual document log, copies of all PCB manifests initiated or received, and all Certificates of Disposal received by the facility must be retained for at least three years after the facility no longer stores PCBs.

Annual Reporting and Exception Reporting

Commercial storage and disposal facilities are required to comply with essentially the same reporting program. An annual report summarizing information contained in the facility's annual document log has to be sent to EPA by July 15th of each year. The first annual report should be submitted on July 15, 1991 and should include information for the period beginning February 5, 1990 and ending December 31, 1990. The report must include a summary for the previous calendar year of the following information:

- Name, address, and EPA ID number of the storage or disposal facility;

- A list of the numbers of all signed manifests of PCB waste that were initiated or received by the facility during the year;
- A categorized summary of PCBs or PCB items stored at the facility at the beginning of the year;
- A categorized summary of PCBs or PCB items received during the year;
- A categorized summary of PCBs or PCB items disposed during the year;
- A categorized summary of PCBs or PCB items transferred to other facilities; and
- A categorized summary of PCBs or PCB items retained at the facility at the end of the year.

If a storage facility receives PCB wastes from offsite without an accompanying manifest, it must submit an Unmanifested Waste Report to EPA. This is an unlikely occurrence because the proposed regulations prohibit storage or disposal facilities from accepting unmanifested PCB wastes.

REQUIREMENTS APPLICABLE TO DISPOSAL FACILITIES

Requirements for disposal facilities handling PCB wastes are summarized in Figure 4.

Notification

Existing disposal facilities (those engaged in PCB waste disposal on or before February 5, 1990) are required to use form 7710-53 to notify EPA of their PCB waste management activities. All PCB disposal facilities are required to have an EPA identification number by June 4, 1990. (Note that the regulations allow disposal facilities to use the generic identification number "40 CFR Part 761" or a RCRA identification number if they have submitted a timely notification but have not yet been issued an identification number by EPA.) All new disposal facilities must obtain agency approval and an EPA identification number before commencing operations.

Manifest Handling

A disposal facility must follow the same manifest handling requirements as a commercial storage facility—see above.

Recordkeeping

Disposal facilities are required to record the dates of removal from service of all PCBs or PCB items received at the facility. This information will be used to determine when One-Year Exception Reports, discussed below, are required.

Annual document logs (as described under generator requirements), Certificates of Disposal, and copies of all manifests must be retained for a minimum of three years after the facility stops handling PCB wastes; however, if the facility practices land disposal, the records must be retained for at least 20 years after the landfill stops accepting PCB wastes.

Reporting Requirements

One of the innovations of the new rule is that the disposal facility must send a Certificate of Disposal to the waste generator or commercial storer originating the manifested waste shipment within 30 days of disposing the waste. This document assures the generator that his waste has been disposed, and also serves as the basis for the generator's One-Year Exception Reports.

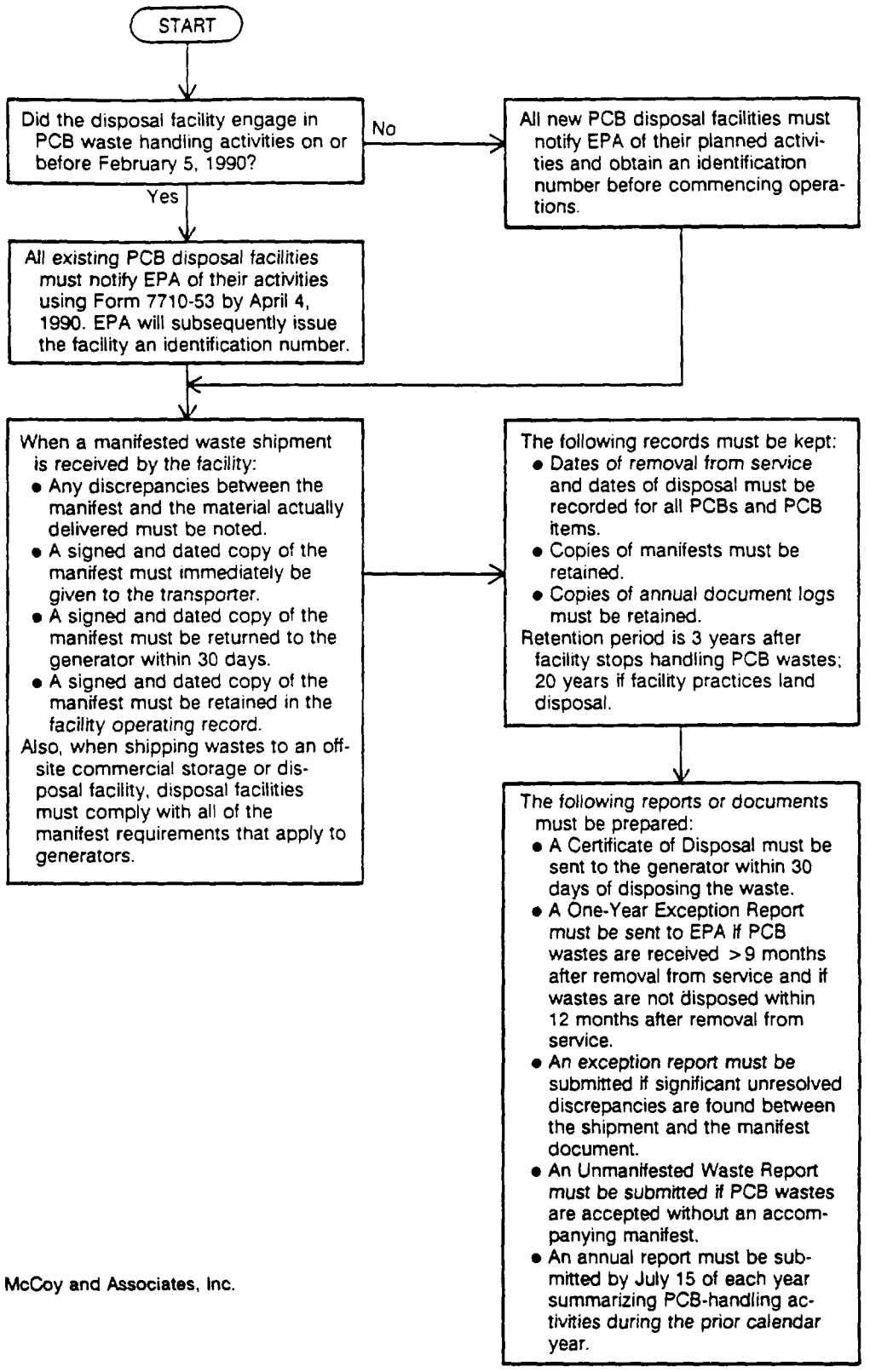
Owners/operators of disposal facilities are also required to submit exception reports if PCBs or PCB items do not comply with the one-year limitation on storage prior to disposal. If the facility receives PCB wastes more than nine months after their date of removal from service, and, because of other disposal commitments, cannot dispose of the waste within the one-year limit, it must send an exception report to EPA.

Disposal facilities are also required to submit two reports related to manifest problems. First, if the shipment of waste received is significantly different than that described on the manifest, the owner/operator has 15 days to resolve the discrepancy. If the discrepancy cannot be resolved within this time period, a report must be submitted to EPA describing the problem and attempts made to reconcile it. Second, as discussed previously for commercial storage facilities, an Unmanifested Waste Report must be sent to EPA for any waste shipments accepted by the disposal facility without an accompanying manifest.

Finally, disposal facilities must send an annual report to EPA by July 15th of each year summarizing their PCB disposal activities for the previous calendar year. The contents of the report are identical to those discussed above for commercial storage facilities.

LABORATORIES AND SAMPLES

Laboratories that store PCB samples are conditionally exempt from the new notification and approval requirements for commercial storage facilities as long as they comply with the previously existing TSCA standards for storage facilities. Laboratory samples of PCB materials are exempt from the manifesting requirements of this rule until their PCB concentrations have been determined and their analytical use has ended. However, in order to qualify for this exemption, samples shipped to and from laboratories must comply with the applicable Department of Transportation and U.S. Postal Service shipping requirements, found respectively in 49 *CFR* 173.345 and U.S. Postal Regulations 652.2 and 652.3. Furthermore, the following information must accompany each sample:



Source: McCoy and Associates, Inc.

FIGURE 4

REQUIREMENTS FOR DISPOSERS OF PCB WASTES

- The sample collector's name, mailing address, and telephone number;
- The laboratory's name, mailing address, and telephone number;
- The quantity and a description of the sample; and
- The date of shipment.

Finally, the sample must be packaged so that it does not leak, spill, or vaporize. After the analytical use of a sample has ended it must be manifested, either by the laboratory or the generator, and properly disposed.

OVERLAPS WITH STATE LAW

EPA has determined that at least 18 states currently regulate various aspects of PCB disposal. Although the TSCA regulatory program for PCB wastes is essentially a federal program, "States may concurrently regulate PCB disposal within their jurisdictions, without supplanting or being supplanted by the Federal requirements." The bottom line is that PCB handlers may have to comply with both state requirements and independent federal requirements:

- A generator exempt from notification under the federal program may be required to notify under a state program.
- State-issued identification numbers are acceptable under the federal system, unless the state-issued number is not based on the same Dun and Bradstreet Data Universal Numbering system used by EPA.
- Although some state agencies provide copies of the Uniform Hazardous Waste Manifest, the instructions may not reflect the requirements of the TSCA manifesting program. The preamble states "reliance upon pre-printed instructions issued by States with the Uniform Manifest will not excuse their responsibility to comply fully with TSCA requirements for PCB wastes."
- If PCB wastes are regulated under a state-administered RCRA program, federal TSCA approvals of commercial storage facilities are independent of state approvals and permits:

> "Thus the fact that a facility storing PCB waste commercially may have a RCRA permit or RCRA interim status would not excuse the requirement to obtain a Federal approval under TSCA to store PCB waste commercially. Likewise, the fact that such a facility is already covered by a State's RCRA closure plan and financial responsibility requirements would not excuse the new TSCA requirements to develop closure plans and demonstrate financial responsibility for closure. However, the burden of these concurrent State and Federal approval requirements should be mitigated, since in many cases, compliance with the RCRA closure and financial responsibility standards shall be sufficient to establish compliance with the similar TSCA approval standards."

EFFECTIVE DATE

These amendments to the TSCA regulations became effective February 5, 1990.

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EPA FINALIZES PLAN TO ISSUE EFFLUENT LIMITATIONS GUIDELINES FOR HAZARDOUS WASTE TREATMENT INDUSTRY

Section 304(m) of the Clean Water Act (CWA), as amended by the Water Quality Act of 1987 (WQA) requires EPA to issue biennial effluent limitations guidelines plans. Each plan must:

- Establish an annual schedule for review and revision of existing effluent limitations guidelines for various categories of sources,
- Identify categories of sources discharging toxic or nonconventional pollutants for which effluent limitations guidelines have not yet been developed, and
- Establish a schedule for promulgating guidelines for newly identified categories of sources.

The agency published its first biennial plan on January 2, 1990 (55 *FR* 80-103). The plan states that effluent limitations guidelines will be issued for the hazardous waste treatment industry by 1995. No such guidelines are currently in effect for this industrial category.

BACKGROUND

After enactment of the CWA in 1972, EPA began developing effluent guidelines for various industry categories. The agency promulgated its first set of guidelines in 1974-1975, covering 28 industry categories. Each set of categorical guidelines contained various limits for conventional pollutants (i.e., chemical oxygen demand, phenols, and several metals). In general, these standards were given in terms of:

- Best practicable control technology (BPT),
- Best conventional pollutant control technology (BCT),
- Best available technology economically achievable (BAT), and/or
- Concentration limits, including new source performance standards (NSPSs), pretreatment standards for existing sources (PSESs), and pretreatment standards for new sources (PSNSs).